

DOCUMENT RESUME

ED 057 494

EA 003 949

AUTHOR Sealey, Ronald W.
TITLE The Courts and Student Rights -- Substantive Matters.
PUB DATE Nov 71
NOTE 52p.; Paper presented at National Organization on Legal Problems in Education annual meeting (17th, Las Vegas, Nevada, November 10-12, 1971)
EDRS PRICE MF-\$0.65 HC-\$3.29
DESCRIPTORS Administrative Personnel; *Court Cases; *Court Doctrine; *Due Process; Equal Protection; Freedom of Speech; *School Law; Speeches; *Student Rights

ABSTRACT

In the development of judicial criteria apparently governing the constitutional rights of students, the question arises as to what causes the various judges to select a particular precedent, as well as criterion, to resolve a student-school authority conflict. The answer might be mitigating and enhancing judicial observations that could be, in fact, reflective of attitudes, philosophies, and other personality dynamics associated with individual judges. It is this phenomena of dynamics which, in a court of equity or law, determines what, in fact, a student right is in the concrete form as contrasted to the abstract form. Most treatises on school law are void of either precedent -- i.e. case law -- statutory or constitutional law, which may very well determine what, in the concrete sense, a student right is in reference to a particular set of circumstances that were adjudicated. More consideration should be given to those cases or laws that arise outside the public school domain but which have relevancy within the public schools in order to properly advise students and others in the educational community. (Author)

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THE COURTS AND STUDENT RIGHTS --

SUBSTANTIVE MATTERS*

by Ronald W. Sealey

The rights or "powers of free action"¹ of students² are generally defined³ by school authorities.⁴ From time to time behavior of^a students⁵ conflicts with the school's mandates,⁵ and such conflict, is neither resolved in the administrative zone nor is it acquiesced too. Rather, the student, subsequent to being denied a right⁶ to public school education seeks judicial relief alleging that certain natural, common law, statutory and/or constitutional rights were infringed or deprived.

The students' alleged rights exist in the abstract form and may be converted into a concrete or manifest form, hereinafter referred to as student rights, if the courts so elects. However, a primary force of conversion is precedent which Karl Llewellyn⁷ described as, "Every doubtful point is answered both ways by authority There is the Janus Face of Precedent" or as Justice Jackson observed "Constitutional precedents are accepted only at their current valuation"⁸

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An essential aspect of precedent is its distinguishing nature which was aptly described by Justice Pound: "No two cases are exactly alike. A young attorney found two opinions in the New York Reports where the facts seemed identical, although the law was in conflict, but an older and more experienced attorney pointed out to him the names of the parties were different."⁹

Student rights are subject to much the same factual distinction and as a result such rights are largely, in the judicial sense, nebulous concepts. This observation was recently noted, again, in student rights litigation by federal circuit Judge Kaufman, when he said:

"The problems raised by this case defy geometric solutions. the best one can hope for is to discern lines of analysis and advance formulations sufficient to bridge past decisions with new facts. One must be satisfied with such present solutions and cannot expect a clear view of the terrain beyond the periphery of the immediate case. It is a frustrating process which does not admit of safe analytic harbors."¹⁰

Therefore, in light of predictability, student rights will not be described in the context of a case, because the case and rights appertaining thereto, are subject to the powerful judicial distinction technique. Rather the judicial criteria which operationally defines students rights will be set forth along with judicial observations. These observations will hopefully provide an insight into the reasons for the judge's selection of certain judicial criteria. The judicial observations are indicative of the judge's perception of the evidence, student's-plaintiff-behavior, school authorities'-defendant-behavior, student-school authorities' relationship in reference to regulation of constitutional rights, and the attitudes and philosophy of the judiciary.

Furthermore, student rights are generally relative¹¹ as compared to absolute and for this reason many of the foregoing rights will be described not in the affirmative but in the negative. More specifically, these relative rights were recently described by Justice Wysanski:

"Order can be defined properly only in terms of the liberties for which it exists, as liberty can be defined properly only in terms of the ordered society in which it thrives. As

Albert Camus implied in The Rebel, order and liberty must find their limits in each other."¹²

The primary focus of this paper will be on substantive ^{by} ~~United States~~ *Federal* Constitutional rights of students. Most of the rights were recently alleged in the Federal Courts as a matter of law and/or equity, wherein students sought injunctive and/or declaratory relief. Except in a few instances, jurisdiction was established pursuant to alleged Federal Constitutional infringements and/or deprivation of rights pursuant to the Civil Rights Act of 1871¹³ and other appropriate statutory provisions.¹⁴

Freedom of Speech or Expression

As an abstract right, the First Amendment reads in part: Congress¹⁵ shall make no law . . . abridging the freedom of speech, or of the press . . .

What ^{are} ~~is~~ the judicial criteria available that determines whether or not this abstract right of freedom of speech or expression is converted into a student's right?

A particular expression of opinion is a right if conveyed "without materially and substantially interfering with the appropriate discipline in the operation of the school" and without colliding with the rights of

including the states and their political subdivisions
"thanks to the Supreme Court's construction are the due process clause"

others,"¹⁶ or does not create a "clear and present danger."¹⁷ Another judicial criterion governing free speech is:

"In each case (courts) must ask whether the gravity of the evil, discounted by its improbability, justified such invasion of free speech as is necessary to avoid the danger."¹⁸

Students may use unpopular language in the form of protest movements but not "fighting words."¹⁹ School authorities cannot prohibit speech or expression of students for reasons of "undifferentiated fear or apprehension of disturbance" ²⁰

A student has a constitutional right "akin to 'pure speech'" to wear an armband, as a symbolic act, to school for the purpose of expressing "certain views."²¹ Students have a right to wear buttons which are "pictorial manifestations of speech" that is "Button and other insignia have an inherently identifying nature."²²

In determining the extent to which symbolic communications will be protected, one criterion is ". . . as the non-verbal message becomes less distinct, the justification for the substantial protections of the First Amendment becomes more remote."²³ "The protection of the First Amendment

is afforded on a sliding scale--the less the speech element, the less protection the First Amendment gives" to a particular form of student expression.²⁴

A . . . "symbol must symbolize a specific idea or viewpoint. A symbol is merely a vehicle by which a concept is transmitted from one person to another, unless it represents a particular idea it becomes meaningless."²⁵ Also, such symbolic expressions of individuality are not within the *ambit of the* First Amendment.²⁶ Nor will free speech protect "gross disrespect" of a principal.^{26a} Moreover, student hairstyle may not be protected just as draft card burning, as an alleged symbolic act, did not receive the protection of the First Amendment. In other words, not all symbolic acts will be construed as symbolic conduct within the ambit of the First Amendment.²⁷ In any case, let us remember "Freedom of speech is not an absolute right."²⁸

A student's right to freedom of expression may not be denied by "mere" publication and distribution per se of a student newspaper. For example, a student newspaper which reported that the dean has a "sick mind" and, also, urges students to destroy all propaganda of the administration will

not necessarily allow the school authorities to forecast substantial disruption.²⁹ A student has the right to publish and distribute a newspaper on the school premises "so long as it does not unreasonably interfere with normal school activities."³⁰ However, within the school building, school authorities may promulgate and enforce reasonable and nondiscriminatory regulations which govern the time, place and manner of distribution of ^{the} newspaper.³¹ But, expression may never be limited merely because of disagreement with or dislike for its contents,³² ^{Also,} and "pedagogical opinion, or appeals to courtesy, are also inadequate grounds for coercive responses to First Amendment expression."³³ On the other hand, school authorities may adopt and enforce reasonable regulations which do not have a "chilling effect" on the First Amendment.³⁴

It is a well settled principle that administrative control over the exercise of First Amendment freedoms must be based on narrow, objective, and definite criteria.³⁵ The determination of overbreadth, such as, "in the best interest of the school," coupled with the threat of subsequent improper enforcement clearly tends to "chill" the exercise of the First Amendment.³⁶ Also, a student is entitled to be informed of the particular

circumstances when health and safety considerations require a boy's hair to be a certain length, such as, in a welding or automotive class. Otherwise, the regulation may be unconstitutionally overboard because it "inhibits free expression more extensively than is necessary to achieve legitimate governmental purposes."³⁷

School authorities may reasonably regulate ". . . in carefully restricted circumstances . . ."^{37a} speech-connected activities, such as, distribution of leaflets soliciting monatory support for the Chicago Seven's defense in the school building, but they have the burden of showing that the regulation was reasonably related (prevents solicitors from eagerly seeking the money of children in a compulsory setting) to the successful operation of the public school.³⁸ Compare these speech connected activities to infringements of expression deemed "pure speech" which may require the school authorities to come forward with^a "substantial burden" showing a necessary relationship to a compelling state of interest.³⁹

Judge Nichols describes another test of infringement on First Amendment rights of students as:

"School authorities must nurture and protect constitutional

rights, not extinguish, unless they find the circumstances

allow them no practical alternatives. As to the existence of

such circumstance, they are the judges, and if within the range

where reasonable minds may differ, their decisions will govern.

But there must be some inquiry and establishment of substan-

tial fact, to buttress the determination."⁴⁰

A rule requiring prior approval of the student's speech or speech related activities must comply with the requirements imposed by the doctrine of prior restraint of free speech, which includes:⁴¹

- (1) expeditious review procedure
- (2) specify to whom and how material may be submitted for clearance
- (3) type of publication allowed
- (4) kinds of disruption which would justify censorship

Speech related activities such as stand-ins and walkouts cannot be regulated, per se, by the will of the administration. There must be a proscription of the kinds of activities involving misconduct which present a material disruption to the educational environment. Otherwise, there may be a prior restraint on free speech as a result of an unconstitutionally overboard statement.⁴²

"The right to differ and express one's opinions, to fully vent his First Amendment rights, even to the extent of exhibiting disrespect for our flag and country by refusing to stand and participate in the Pledge of Allegiance, cannot be suppressed by the imposition of suspension."⁴³

Yet another judicial criterion often mentioned is that in some areas, such as voting and marriage, ". . . a child--like someone in a captive audience--is not possessed of that full capacity for individual choice which is the presupposition of First Amendment guarantees."⁴⁴ Compare the preceding statement to the Supreme Court statements, wherein it was said "students . . . do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate,"⁴⁵ and "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone."⁴⁶

Finally, a student may wish to allege his ^{right to} freedom of speech right in a state court which may permit greater, not less, freedom of expression of student conduct, pursuant to the 50 state constitutional free speech clauses.⁴⁷

First Amendment - Freedom of Association

Congress shall make no law . . . abridging . . . the right of the people to peaceably assemble

Freedom of Association in the judicial sense remains in the abstract as an alleged right in the public schools.

Students do not have a right to freedom of association in reference to fraternities, sororities, and secret societies,⁴⁸ although there is authority to the contrary.⁴⁹ Also, one may distinguish between the adult community wherein anti-fraternity legislation would deprive them their freedom of association as compared to students who are without such rights because fraternities and like organizations would detrimentally affect student body morale in addition to being undemocratic.⁵⁰

Picketing and parading on public premises may be regulated in the interest of an orderly society even though such activities are an integral part of freedom of association and speech.⁵¹

Freedom of
First Amendment - Religion

Congress shall make no laws respecting an establishment of religion or prohibiting the free exercise thereof

Freedom of religion has been alleged by students--but the courts, generally, have redirected this alleged right to freedom of speech. However, several student rights have emerged as a result of freedom of religion.

Students may refuse to stand and sing the National Anthem if such refusal is based on^a religious belief and the school authorities may not examine the reasonableness or sincerity of such a belief.⁵² A student's free exercise of religion in school may be curtailed if it: "creates a clear and present danger of impairing the public health or safety, or of offending widely accepted moral codes, or of resulting in a more than negligible ^{breach} ~~breach~~ of the peace."⁵³

Students have a right not to be instructed in religion in the public schools unless such instruction is presented in an objective manner such as comparative religions. Also, he must not be subjected to prayer or Bible reading in the public school setting.⁵⁴ Nor, should the school authorities implement any program, with its power of control and appropriation, which would interfere with the free exercise of religion ^{so as to} ~~inhibit~~ a religious belief by coercion.⁵⁵

Fourth Amendment

This amendment reads in part "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures"

The rights of students pursuant to the Fourth Amendment are dormant as they have remained in a judicial abstract form and have not been converted to student rights for many reasons, some of which are:

- (1) school officials are not governmental agents⁵⁶
- (2) in order to maintain discipline, health, safety and welfare of students⁵⁷
- (3) school authorities acting "in loco parentis"⁵⁸
- (4) school locker not in the exclusive possession of the student⁵⁹
- (5) parents have a right to expect certain safeguards for their children⁶⁰ and the school administrator is an agent of the school district entrusted with the duty to search if necessary⁶¹

Eighth Amendment

Reads in part,

"... nor cruel and unusual punishment inflicted."

Generally, freedom from cruel and unusual punishment remains in the judicial abstract form for several reasons. If a student has to cut his hair this is not a violation of his right to be free from cruel and unusual punishment, such a contention is according to one court, "Wholly without merit."⁶² In reference to school regulations, "the (student) has not been

the subject of any criminal sanction, and has not been abused, tortured, or otherwise, she (student) is clearly not within the ambit of that (eighth) Amendment"⁶³ and "a reasonable form of corporal punishment will be upheld in order to avoid ultimate destruction of the school, however, recrimatory corporal punishment is not allowed. In essence, 'all that is good is not commanded by the Constitution and all that is bad is not forbidden by it.'"⁶⁴

Ninth Amendment

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

One judicial criterion for conversion to student rights is whether the alleged right is so fundamental as to become a part of the "rooted-tradition and conscience of our people,"⁶⁵ such as marital privacy, the free development of personality, the kind of education for American families and certain aspects of natural law.

In holding that hair receive protection pursuant to the Ninth Amendment as a fundamental liberty, District Judge Justice stated:

"Considering the backgrounds of the framers and their personal experiences with despotic and autocratic government, I submit

that their purpose in adopting the Ninth Amendment was to retain for the people such privileges and immunities, complementary and parallel to the enumerated rights, as might be essential for the preservation and promotion of human dignity and liberty. In various decisions, the Supreme Court has given tacit recognition to this design of the framers, employing one methodology of interpretation, extrapolation, and analogy. What is involved is nothing less than the constitutional right of individuals to preserve the sanctity of their own bodies from unwarranted invasion by the state - the right to be let alone."⁶⁶

The Ninth Amendment is clearly, and again necessarily, left to judicial determination, and therefore, "the right to wear one's hair in a manner of his choice to be a protected right of personal taste not to be interfered with unless the state can meet the "substantial burden criteria."⁶⁷

Another court⁶⁸ was reluctant to consider the matter of hairstyle a fundamental right, because that kind of ruling would extend the Federal judicial powers, as is the case with the Fourteenth Amendment.

Eleventh Amendment

judicial Form
In the [^]abstract the Eleventh Amendment reads in pertinent part,

"The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, . . ."

With the increasing recognition of arbitrary state political boundaries and the availability of interstate public school district agreements the Eleventh Amendment may soon be operationalized to preclude public school student residing in one state, from judicially challenging a school district regulations of another state.⁶⁹

Fourteenth Amendment - Due Process Clause

judicial Form
In the [^]abstract the Fourteenth Amendment reads in pertinent part:

". . . . nor shall any State deprive any person of life, liberty, or property, without due process of law."

The judicial criteria which converts the abstract Due Process Clause into a concrete right are numerous.

A student may lose the right to govern his personal appearance if the school authorities adopt a regulation with a reasonable basis (determined by the evidence presented to the court), but such is not the case when "no

moral or social ill consequences will result to other students due to the presence or absence of long hair, nor should it have a bearing on the wearer or other students to learn or to be taught."⁷⁰

The manner in which a student presents himself to the world is a basic value implicit in the concept of liberty. If the school authorities are to "rudely" invade a highly protected freedom they must carry the "substantial burden of justification," otherwise, such action "would offend a widely shared concept of human dignity, would assault personality and individuality would undermine identity, and would invade human being."⁷¹

Due Process Clause protects fundamental rights, such as the right to interstate travel, by requiring school authorities to demonstrate a ~~compelling~~ ^{compelling} state interest, but, it also protects non-fundamental "trivial" freedoms such as the right to wear one's hair as he pleases.⁷² Furthermore, "liberty" also embraces "the right to wear clean blue jeans to school unless there is an outweighing state interest justifying their exclusion."⁷³

Whereas substantive due process "reasonableness" focuses on the concern for the student's right; "the rights of other students, and the interest of teachers, administrators and the community at large are paramount."⁷⁴

Next, when and how may the school authorities justify the denial of certain student liberties? Does "liberty" imply only the absence of arbitrary restraint?⁷⁵ Is the intrusion justified when there is "an outweighing state interest?"⁷⁶ ~~justifying the intrusion?~~⁷⁶ The school authorities must consider:

"(1) the nature of the liberty asserted, (2) the context in which it is asserted, and (3) the extent to which the intrusion is confined to the legitimate public interest to be served."⁷⁷

The school authorities justification may be self-evident, such as perverse behavior associated with long hair, or affirmatively shown by the presentation of facts, not opinions.⁷⁸ Student conduct which is within the ambit of the Fourteenth Amendment is lower on the constitutional scale of values, as compared to the First and Ninth Amendment protections, thereby affording less protection to the student. In addition, school authorities regulation may be justified by the "absence of arbitrary restraint upon the liberty" coupled with the fact that one can exercise greater control over children than adults. In view of these considerations

the only burden the school district has is to present "some" evidence of distraction.⁷⁹

The Federal court's role in determining whether or not a school regulation of a student's liberty violates substantive due process is "relatively narrow." The courts do not rule upon the wisdom of the rules or its expedience.⁸⁰ Generally, the court's role is confined to the following questions: (1) does the regulation deal with a matter of legitimate state interest⁸¹ or valid object of state power,⁸² or "have rationale relevance to a legitimate government objective?"⁸³ Next, is it a reasonable regulation? Reasonableness may be determined "in light of the overall situation . . . and the evidence which showed a substantial need for such a measure,"⁸⁴ or "where there is any rationale basis for the questioned rule, or a reasonable connection to the successful operation of the school."⁸⁵

The "mere" fact that the student's conduct or appearance has not created a classroom disturbance is not conclusive of ^{the} its unreasonableness.⁸⁶ *If the regulation is questioned*

A regulation may be deemed reasonable, not arbitrary or capricious, if it complies with the standards for aesthetic considerations which include unconventional appearances, school reputation, and school pride, notwithstand-

ing the fact that there was little or no evidence of disruption. Judge

Wilson notes:

A sense of orderliness, a sense of propriety, and a sense of beauty are distinguishing characteristics of the human species. While not always explainable in terms of concrete reason, these matters are facts of human life. They form the basis of the concept commonly referred to as aesthetics.

In these days of growing environmental concern any court denying that aesthetic considerations may form the basis for public regulation would doubtless find itself swimming against the current in very murky legal waters.⁸⁷

Another judicial criteria of reasonableness may be phrased in this manner, "the fact that a regulation may be harsh, unfair, inequitable, create hardships or inconvenience, or may be oppressive, severe or drastic, and of doubtful propriety, does not demonstrate its invalidity." Moreover, "there must be a violation of a specific constitutional provision of Federal law, otherwise, the Federal courts will not find a right to substantive due process under the Fifth or Fourteenth Amendment."⁸⁸

Yet, another judicial approach under the Due Process Clause to certain student rights is that noted by Justice Noel: "Are we (courts) to return to the discredited concepts of substantive due process and brazenly substitute its educational policy preference of its taste in dress-(pantsuit)-for the judgment of a legislature or school board which is directly answerable to the electorate? "To pose such questions is to answer them - they are simply not the stuff of constitutional law."⁸⁹

Reasonableness may be defined in terms of the alternatives available in controlling the problem without infringing upon the students constitutional rights.⁹⁰ A balancing of interest is paramount in the relative law between the school authorities and students. For example, reasonableness may be determined by "weighing the individual's interest in engaging in the forbidden activity against the state's interest of circumscribing such activity."⁹¹ The Law must be shown necessary, and not merely rationally related to the accomplishment of a permissible State School Board Policy.⁹²

Still, another judicial criterion of the reasonableness of school authorities regulations may be: "If their (school authorities) decision is within the range where reasonable minds may differ their decision will govern."⁹³

If a right to an education is not being denied, generally the courts criteria of reasonableness of the school authorities action is liberalized.

Examples of this action would be precluding students from playing in the school band,⁹⁴ or not allowing a student to take part in a post graduate "diploma" ceremony,⁹⁵ or the denial of athletic participation which does not raise issue of constitutional proportions.⁹⁶

Compare the above liberalized test to a school regulation precluding unmarried pregnant students from a public education. Here a right to equal educational opportunity is at stake. Therefore, reasonableness becomes a demanding constitutional test.⁹⁷

One justice⁹⁸ suggested school authorities may promulgate reasonable rules if the Board of Education would conduct a study to assess the mores and wishes of the public, including students and the faculty of its school.

A school official's blatant inconsistency may at times be "so inherently unfair as to be arbitrary and unreasonable, constituting a denial of due process . . ."⁹⁹

The power of school authorities to promulgate regulations governing student conduct has been questioned in reference to an unconstitutional delegation of power. In order for the school authorities to withstand

the strictures of due process in promulgating regulations governing student appearance, they must be guided by a primary standard set forth by the legislature. More specifically, when the regulation emerges from such amorphous legislative concepts as "to maintain discipline" and no other guidelines for discretionary behavior is available, due process is lacking.¹⁰⁰

A judicial criterion of "liberty" the courts have employed to resolve the matter of ^a student's right to govern his personal appearance, is found in the often cited Union Pacific Railway Company vs. Botsford,¹⁰¹ wherein it was stated: "The right to one's person may be said to be a right of complete immunity: to be left alone." Moreover, Justice ^{Fortas} ~~Goldberg~~ writ-

ing the majority opinion in Tinker recognized the "right to be left alone".

^{the court's EXAMINATION OF}
Subsequent to ^{the} examining the evidence presented by school authorities as justification for deprivation of a freedom of expression he said there is: "No evidence . . . of collision with the rights of other students to be secure and to be left alone."¹⁰²

The question of who has the burden of proof in matters of substantive due process may be answered in this manner: school regulations are presumed valid, therefore, the burden rests with the student challenging the regula-

tion; but, if the regulation is on its face flagrantly repugnant to a First Amendment right then the burden is on the school authorities to justify the alleged constitutional infringement.¹⁰³

Finally, it should be added that the student has a right pursuant to the "Liberty Clause" . . . to engage in any of the common occupations of life and to acquire useful knowledge."¹⁰⁴

Fourteenth Amendment - Equal Protection Clause

" . . . nor shall any state . . . deny to any person within its jurisdiction the equal protection of the laws."

One judicial criterion which determines students right(s) under the equal protection clause is the proper standard of review which depends in turn upon the nature of the interest threatened or disregarded by the classification ^{IN THIS CASE.} (regulation). There are two standards of review:

(1) Restrained review, and (2) Active Review. Restrained review standard applied to nonfundamental rights wherein a "classification is valid, if it is not arbitrary and has a reasonable connection with some permissible legislative or administrative purpose." Active review applies when a classification, " . . . serves to penalize the exercise of a fundamental

right and must be justified by a compelling governmental interest."¹⁰⁵

The reasonableness test may be applied to equal protection problems in

the following manner: "any distinction between those who receive this

right to a public education and those who do not must have a reasonable

basis and must reasonably relate to the purpose for which the classification

is made."¹⁰⁶ For example, an unreasonable classification would be "hair

must not be blocked in back"¹⁰⁷ and "community prejudices and stereotypes

are not permissible criteria for classifying citizens under the Fourteenth

Amendment."¹⁰⁸

A classification is not reasonable which excludes all members of a class, such as unwed pregnant girls, from school without knowing whether

the condition may be detrimental to the school.¹⁰⁹ However, equal protec-

tion does not require the school officials to promulgate the same hairstyle

regulation for all schools in the district.¹¹⁰

The Equal Protection Clause generates the following types of questions: What judicial criteria is available in considering the discriminatory enforcement of a regulation or other administrative mandates? Did the school authorities enforce the rule "across the board" in good faith?¹¹¹ Did the school authorities

engage in "invidious discrimination?"¹¹² Should hairstyle regulations, for reasons of health and safety, apply to girls as well as boys?¹¹³

To determine if members of a class are being discriminated against, one may ask ". . . whether the length of a boy's hair is distracting today as would be girls scantily clad. . . ., so as to justify the regulation of hair styles."¹¹⁴

When the school authorities allow a teacher to breach the same standard prescribed for students, the students are arbitrarily being discriminated against.¹¹⁵

Not only does Equal Protection Clause require that all students have an equal educational opportunity regardless of race,¹¹⁶ but, it also requires a principal to remove a Confederate Battle Flag from his office because it is an affront to Black students and an impediment to fostering a unitary school system.¹¹⁷

Penumbral Constitutional Rights

Generally, these rights evolve when the judiciary thinks the alleged right is worthy of constitutional protection, but cannot find a specified guarantee or precedent to rely upon, such as the right to privacy.¹¹⁸

This constitutional right may be expressed in reference to the nature of the burden on school authorities. For example: ^{quote} "whether this right is characterized as protected by the First Amendment (Freedom of expression), the Ninth Amendment (Penumbra Rights) or the Fourteenth Amendment (Right to Reasonable and Nonarbitrary Classification) is of no import.

The fact remains that hairstyle is a right because the Fifth Circuit permits it to be regulated only upon a showing of the subordinating State interest."¹¹⁹ ^{unquote}

The right of privacy in the development of one's personality is protected by the Constitution this includes the wearing of one's hair at the length and in the manner he chooses.¹²⁰

Now let us examine the mechanism which, in my opinion, is reflective of process of converting the aforementioned abstract

Mitigating and Enhancing Judicial Observations

The foregoing mitigating and enhancing judicial observations are representative of the respective non-supporting and supporting statements on student rights frequently reported in a judge's opinion. *judicial criteria into student rights*

The mitigating and enhancing observations may reflect the judge's interpretation of evidence, perception of precedent, his attitudes and philosophy on the general issue of the student-school authorities relationship, and other judicial considerations.

The judicial observations are indicative of the judge's selection or rejection of certain judicial criteria, precedent, and procedural devices, which, in effect, convert the student's abstract constitutional rights into a concrete or realized right. Although this conversion does not mean that such a right will necessarily support the student in reference to the ultimate outcome of litigation. Furthermore, the judicial observations are not necessarily related to one constitutional right, but may effect all rights of students.

Mitigating Judicial Observations

The foregoing judicial observation tend to mitigate against a student's concrete rights either in fact or symptomatically. Unless otherwise noted, the following judicial statements (quoted or paraphrased) refer to student's behavior.

(1) Buttons, historically, tend to polarize groups in a particular school with underlying racial problems, resulting in fights and general disciplinary problems.¹²¹

(2) A school rule when enforced prohibited some 300 students from engaging in a sit-in in the hallway outside the school

administrator's office protesting the suspension of three fellow students. Moreover, students admitted that their conduct was disruptive; distributed buttons forcibly and threw buttons through windows.¹²²

(3) Wearing pantsuit and a walk-out both of which sought to "undermine and disrupt the educational process"¹²³

(4) ". . . ,the (Supreme) Court has repeatedly emphasized the need for affirming the comprehensive authority of the States and of school authorities, consistent with fundamental constitutional safeguards, to prescribe and control the conduct of the schools."¹²⁴

(5) "Expert opinion established that it is injurious to the educational process when a deviation on the part of one student leads to the lack of acceptance on the part of many students." In addition, the public receives the benefit of a non-disruptive educational decorum.¹²⁵

(6) "Furthermore courts of equity will not ordinarily interfere by injunctive process with the actions of subordinate political or municipal tribunals, including school boards.

And, where matters are by law left to the discretion of such bodies, the exercise of that discretion, in good faith, absent fraud, will not be disturbed."¹²⁶

- (7) School authorities provided a "readily available forum" to conduct a speech related rally, and the student's "abrasive and contemptuous behavior cannot be whitewashed by constitutional incantations."¹²⁷
- (8) "Chronically slept in class," . . . "stolen school property," . . . "stolen whiskey from his father's store," . . . "admitted he used a form of narcotic drug and the main reason he wants to return to school is to be 'near his wife.'"¹²⁸
- (9) Name calling episodes among exponents of long hair and objecting students¹²⁹
- (10) "Any attempt to compare and equate the constitutional rights of adults in the area of personal grooming on the same plane with that of adolescent high school teenagers, who are compelled by law to attend school until 16 years of age is like comparing oranges and apples." The compulsory nature of education supports this analogy.¹³⁰

- (11) The demography of a school and the parents background would presumably lead to disruption, in addition to singing and marching in the hallways during school hours.¹³¹
- (12) Racial tension and fights provoked by Confederate Flag on student's jacket¹³²
- (13) Principal actively allowed students in the past other avenues for demonstrating their views; loud talking and blocking passage of students in the hallways and disrespect for teachers, such as "don't listen to that old bag - the berets will take care of her."¹³³
- (14) Distribution of publication which called the principal "a big liar" among other names; use of certain profane four letter words; and subsequent definance of suspension orders¹³⁴
- (15) Prior discipline problem;¹³⁵ safety problem and school authorities loss of community support for athletic program all of which were corroborated by evidence presented, in addition to Superintendent's many years of experience¹³⁶
- (16) Student attempted to by-pass the available administrative processes.¹³⁷

- (17) "The rule is clear, and the student deliberately chose to flaunt them and her parents knowingly permitted her to flaunt them."¹³⁸
- (18) Simply refused to comply with hairstyle regulation saying, "I like it (hairstyle) that way," (not representative of a political or religious belief) and subsequent to suspension he was absent or truant at least one day a week¹³⁹
- (19) Physically assaulted dean of men; poor academic record; twenty years old; and lives in apartment not at home¹⁴⁰
- (20) "Students were an integral part of the decision-making process with respect to grooming regulations."¹⁴¹
- (21) Engaged in fights, harrassment and acknowledged that his behavior caused a disruption of the educational process¹⁴²
- (22) If he remains in school there is a lack of irreparable injury for injunctive relief or ripeness for adjudication.¹⁴³
- (23) Deliberately arranging a conference with the principal to gain visability through mass media; recording a song which "deals" with the regulation in question, and using profane language in school.¹⁴⁴

(24) Survey of student interest resulted in the adoption of a very specific regulation.¹⁴⁵

(25) Absent one day a week and constantly combing hair in class and elsewhere.¹⁴⁶

(26) "It is not for this Court to say that the action of the student body and the school administration in adopting the hair regulation acted without any basis in reason. Turning for an illustration to the judiciary itself, while some judges might tolerate longer hair than others, it is safe to venture that if a courtroom bailiff attempted to appear in court with the hairstyle and appearance of the wild man from Borneo, every Federal judge in the land could readily find reason for excluding him from the courtroom."¹⁴⁷

(27) The series of disciplinary problems should have been the basis of the suspension.¹⁴⁸

(28) An eight year old student did not seek redress by administrative appeal but attempted political appeal by collecting a thousand names on a petition to no avail. "Apparently, as

a last resort, by uttering the incantations of a few constitutional phrases, plaintiff seeks to enlist this Federal court as an ally in what is essentially a local squabble about matters of taste."¹⁴⁹

(29) "Each of the opinions might be debated to some extent as was done by the trial court. The fact remains, however, that the affidavits are from trained professionals who are in day to day observation of their classrooms. While lawyers and judges may disagree, none of the affidavits is so inherently improbable that it is lacking in value as evidence."¹⁵⁰

(30) The Federal court may abstain in regard to student rights and direct the case to the state court, to rule on state matters and Federal matters unless there is evidence presented that has a "chilling effect" on First Amendment rights.¹⁵¹

(31) A court is without jurisdiction to consider a student's right if his allegations are predicated on what the school authorities "may" do if they violate a regulation.¹⁵² There must be an actual controversy^{152a}, because "the resolution of abstract

constitutional debates and the rendering of advisory opinions
is forbidden to federal courts."^{152b}

Enhancing Judicial Observations

The foregoing judicial observations tend to enhance a student's rights
either in fact or symptomatically.

- (1) "Students are persons under the Constitution, they have the
same right and enjoy the same privileges as adults."¹⁵³
- (2) "silent, passive, expression of opinion,' unaccompanied by any
disorder or disturbance on the part of petitioners (students)."¹⁵⁴
- (3) Principal violated statutory law governing number of days
for suspension.¹⁵⁵
- (4) "It is also clear that if a student complies with reasonable
rules as to time and place for distribution within the
school, and does so in an orderly, non-disruptive manner,
then he should not suffer if other students, who are lack-
ing in self-control, tend to over-react thereby becoming
a disruptive influence."¹⁵⁶
- (5) "Mild curiosity" of other students resulting from wearing

buttons in school will not suffice to exclude a student from school. Nor can such exclusion be based on instilling respect or the implicit undermining authority test.¹⁵⁷

- (6) No disruption other than "outside the classroom, a few students made hostile remarks to the children wearing armbands, but there were no threats or acts of violence on school premises."¹⁵⁸

- (7) "It is revealing" that the meeting at which the school principals decided to issue the contested regulation was called in response to a student's statement that he wanted to "write an article on Vietnam and have it published in the school newspaper. (The student was dissuaded.)"¹⁵⁹

- (8) "It is also relevant that the school authorities did not purport to prohibit the wearing of all symbols of political or controversial significance."¹⁶⁰

- (9) ^{School} "Such Boards are numerous and their territorial jurisdiction often small. But small and local authority may feel less sense of responsibility to the Constitution,

and agencies of publicity may be less vigilant in calling it to account."¹⁶¹

- (10) Testimony without formal proof which stereotypes students with long hair as being involved in riots, and using drugs; long hair is usually associated with poor academic performance or disruption, abnormal appearances of one student distracts others.¹⁶²

- (11) Hair was not longer than regulations permitted.¹⁶³

- (12) Hair regulation ^{employed} as a safety measure ^{but} and many women with long hair are employed in industry.¹⁶⁴

- (13) Willingness to comply with everything except hair regulation.¹⁶⁵

- (14) The "rule invades private life beyond the schools jurisdiction."¹⁶⁶

- (15) Principal only announced to students policy regarding hair without circulating a written document.¹⁶⁷

- (16) Testimony of a University professor that possession in school of a publication with obscene words did in fact have "literary quality and perception."¹⁶⁸

(17) Has a practically imperceptible mustache which "is merely a natural growth, not a cultivated adornment."¹⁶⁹

(18) Hairstyle enhances personal appearance and the student ^{had an} was above average academic standing.¹⁷⁰

(19) School authorities exceeded the bounds of state law and administrators were fearful of causing some controversy and acted without a valid rule.¹⁷¹

(20) Principal's Testimony: "I apply the dress code as I see it. We don't define the term dungarees as what it is."¹⁷²

(21) Administrator's personal taste or "ipse dixit."¹⁷³

(22) "No reliable evidence that hair provisions of the code are necessary to alleviate interference with the educational process."¹⁷⁴

(23) Hair length did not constitute a health problem or a physical obstruction or danger ^{to} himself or any other person.¹⁷⁵

(24) "Courts must base their judgements upon existing facts and circumstances, not upon speculation and conjecture as to what might happen."¹⁷⁶

- (25) "An argument that long hair produces absenteeism or a lower intelligence level is nothing short of ludicrous" and long hair does not necessarily cause fights as it could be one of several reasons.¹⁷⁷
- (26) Evidence presented by school authorities is without scientific basis but rather educational philosophy; and hair was symbolic protest against the war in Vietnam.¹⁷⁸
- (27) Student was "neatly groomed."¹⁷⁹
- (28) No long standing policy contrary to Superintendent testimony, rather an ad hoc policy; and evidence that he allowed other comparable forms of symbolic protest.¹⁸⁰
- (29) "School authorities did not present evidence of the publications impact, other comparable materials in the school library, number and age to whom publication distributed, and whether or not it was approved by teachers."¹⁸¹
- (30) Nor can school authorities allow some students to wear buttons and not others.¹⁸²
- (31) May place a paid anti-vietnam advertisement in the school newspaper since the administrators allowed other items of

comparable national interest to be published.¹⁸³

(32) School authorities alleged anti-Vietnam advertisement was not a "school related" matter.¹⁸⁴

(33) Being seated during pledge and salute to flag without disruption.¹⁸⁵

(34) School authorities attempted to prevent distribution of newspaper because they "disliked" the contents.¹⁸⁶

(35) A noted inconsistency between the alleged turmoil of a student newspaper and a critical coach who had a sign in his office "which in substance stated put your heart in this country or get your ass out of it."¹⁸⁷

(36) Future threat of enforcement will not render the issue moot; ^{and} dress regulation, in effect, required ~~to have~~ ^{to have his} student's hair cut by a barber not an amateur.¹⁸⁸

(37) Administrator stated the student's claim to be reinstated in school for constitutional reasons is "frivolous and petty."¹⁸⁹

(38) Evidence of body odor must be related to the hairstyle which violated the regulation.¹⁹⁰

- (39) In response to the school's allegation which suggested that challenging a rule would result in a disciplinary problem the court replied: "If one forfeits rights by asking for them they were never rights."¹⁹¹
- (40) School authorities presented testimony that all people wearing long hair are mentally ill.¹⁹²
- (41) "The description of the situation as 'explosive' or as a 'confrontation' appears to reflect the anxieties of the school personnel rather than the reaction of the other students."¹⁹³
- (42) Nor does "mere charge" of possessing heroin justify a detrimental relationship to the health, safety, and morals of other students.¹⁹⁴
- (43) " . . . the presence and enforcement of the hair-cut rule causes far more disruption of the classroom instructional process than the hair it seeks to prohibit."¹⁹⁵
- (44) "A 275 pound football tackle, a 6 foot, 8 inch basketball center, or a comely young woman may also be distractions, are they to be banned?"¹⁹⁶

(45) Wearing "provocative" brown armbands in school representing Mexican-American demands for change in the educational system when only isolated incidents of unrest or apprehension were attributable to the wearing of brown armbands.¹⁹⁷

(46) In reference to the doctrine of in loco parentis "the role of the school is that of a wise parent not the foolish or indulgent one."¹⁹⁸

(47) "Generalities, such as, ^{ations} ^{quote} "in the best interest of education," have been accepted for years as the proper sort of standard for any "'unique educational environment.' However, Tinker has tolled the beginning of change."¹⁹⁹

CONCLUSION

Why is there so much conflict and inconsistency in the Federal Courts in matters of student rights? Given comparable evidence why does one judge assign greater value to it than another judge? Why are there dissenting opinions?

Emerging from the maze of judicial criteria and the overwhelming possibilities of judicial observations are substantive constitutional rights of students which are defined in degrees and such degrees are defined by the ^{judges} judicial affective and cognitive domain^(~~and~~ ~~judicial~~ ~~domain~~). More specifically, student's substantive constitutional rights are subject to a multitude of judicial criteria and more importantly, the personality dynamics of the judge or ^{especially in a non-jury trial} judges. The selection of judicial criteria which apparently governs substantive constitutional rights of students appears to be dependent upon the judge's perceptions, attitudes and philosophy which were in part, reflected in the aforementioned mitigating and enhancing judicial observations. These perceptions, attitudes, and philosophies are realized primarily through the judicial power of voluntary selection of "appropriate" precedent magnified by the inherent distinguishing nature of judicially

manifest student rights. Therefore, in order to define student rights, with few exceptions, one must be not only knowledgeable of the vast judicial criteria available to the courts, but more importantly, he must master the perceptions, attitudes, and philosophies of the judiciary. The reported opinions are the beginning of this search for a definition of student rights--certainly not the end.

Often a judge will not find internal precedent (that factual situation which arose in the public schools) in compliance with his reaction to stimuli (evidence and personalities, especially in a court of original jurisdiction) and relies upon external precedent to support his reaction. For this reason and the fact that "school law" is a hybrid analogous to Justice Suttle's²⁰⁰ "hair law" we must make a greater effort to explore and identify, especially in the literary field, those principles of law which arose outside of the public school domain, but which have tremendous relevancy within the public school community.

Finally, what does the judicial criteria apparently governing student rights mean to students? One study²⁰¹ attempted to determine in part, what "substantial disruption" meant to a large sample of high school students.

The responses were as inconsistent as the courts which have employed this criterion. Furthermore, how do we resolve the conflict between the student's right to read, acquire knowledge, to be let alone, and the right of a student to engage in First Amendment protest in the schools, when such protest is less than "substantially" disruptive to the educational process?

FOOTNOTES

*Substantive Law - That part of the law which creates, defines, and regulates rights, as opposed to 'adjective or remedial law,' which prescribes method of enforcing the rights or obtaining redress for their invasion. H. C. Black, Black's Law Dictionary, West Publishing Co., (Fourth Edition, 1957), p. 1598

1. Henry Campbell Black, Black's Law Dictionary, West Publishing Co., (Fourth Edition, 1957) p. 1486
2. Public elementary and secondary school students--as litigants in civil rights actions they are generally known as minor-plaintiffs and petitioners.
3. Generally, a student accepts, acquiesces, or tolerantly deviates from a school authorities' attempted control of their conduct.
4. Public school board of education, superintendent, principal and other school personnel.
5. Policies, regulation, role, procedure, announcement, and other mandates of behavior.
6. Brown v Board of Education, Topeka, Kansas. 347 U.S. 483 at 493 (1954)
7. Karl Lewellyn, "The Bramble Bush" (1930) p. 149.
8. Robert H. Jackson, "Task of Maintaining Our liberties," 39 A. B. A. J. 962 (1953)
9. Cuthbert W. Pound, 5 NY.S. B. Bull. 267 (1933)
10. Eisner v Stamford Board of Education, 440 F2d 803 at 804-805 n. 1 (2nd cir. 1971); modified, aff. and remanded 314 F. Supp. 832 (D. Conn. 1970)
11. Black, supra note 1, at 1487
12. Richards v. Thurston, 304 F. Supp 449 at 452 (D. Mass. 1969); aff. 424 F.2d 1281 (1st Cir. 1970)
13. 42 U.S.C. sec 1983 et. seg. Monroe v. Pape, [365 U.S. 167 at 173-174 (1961)] construed, sec. 1983 to give Federal Courts jurisdiction, to protect civil rights, when:
 - (1) necessary to override certain kinds of state laws, or
 - (2) providing a remedy when state law is inadequate or
 - (3) the state recourse is adequate in theory but not available in practice
14. 28 U.S.C. 1343, 2202 and 42 U.S.C. 1981 et seq.

15. The Bill of Rights apply to the States and its governmental sub divisions including school districts as a construction of the "Liberty" clause, a part of the Due Process Clause or the Fourteenth Amendment to the United States Constitution. See, Gitton v. New York, 268 U.S. 652 (1925); Fiske v. Kansas, 274 U.S. 380 (1927); Cantwell v. Connecticut, 310 U.S. 296 (1940); De Jonge v. Oregon, 299 U.S. 353 (1937) and Everson v. Board of Education of Ewing Tp., 330 U.S. 1 (1947).
16. Tinker v. Des Moines School Dist. 393 U.S. 503 at 513 (Ia. 1969); rev. 383 F.2d 988 (8th cir., 1968); and 258 F. Supp. 971 (S.D. Iowa, 1966)
17. West Virginia State Board of Education v. Barnette, 319 U.S. 624 at 633 (W. Va. 1943); see original statement Schewck v. United States 249 U.S. 49 (1918)
18. Dennis v. United States, 341 U.S. 497 (1951)
19. Butts v. Dallas Independent School District, 436 F.2d 728 at 732 (5th cir., 1971); rev. 306 F. Supp. 488 (W.D. Tex 1969)
20. Tinker, supra note 16 at 508.
21. Tinker, supra note 16 at 505-506.
22. Guzick v. Drebus, 305 F. Supp. 472 at 481 (W.D. Ohio, 1969); aff. 431 F.2d 594 (6th cir., 1970)
23. Richards, supra note 12 at 1283
24. Jeffers v. Tuba City Unified School District, 319 F. Supp. 368 at 372 (E.D. Calif. 1970)
25. Davis v. Firment, 269 F. Supp. 524 at 527 (E.D. La., 1967); aff. 408 F.2d 1085 (5th cir., 1969)
26. Brick v. Board of Education School District No. 1, Denver, Colo., 305 F. Supp. 1316. at 1320 (D. Colo. 1969).
- 26a. Schwartz v. Zucker 298 F. Supp. 238 (E.D. N.Y. 1969)
27. Id. at 319 citing United States v. O'Brien 391 U.S. 367 at 376 (1968)
28. Terminiello v. Chicago, 337 U.S. 1 (1948)
29. Scoville, v. Board of Education of Joliet Township High School District 204, County of Will, State of Illinois, 425 F.2d 10 (7th cir., 1970); rev. 286 F. Supp. 988 (N.D. Ill. 1968) cert den. 1400 U.S. 826
30. Sullivan v. Houston Independent School District 307 F. Supp. 1328 (S.D. Tex., 1969)
31. Id.
32. Melton v. Young 328 F. Supp. 88 at 96 (E.D. Tenn. 1971)
33. Frain v. Baron 307 F. Supp. 27 at 33 (E.D. N.Y. 1969)
34. Farrell v. Joel 437 F.2d 160 (2nd cir., 1971)
35. Shuttlesworth v. Dormingham 394 U.S. 147 at 151 N.2 (1968)
36. Sullivan, supra note 30 at 1346
37. Oloff v. East Side Union High School District 305 F. Supp. 557 (N.D. Calif. 1969); rev. as King v. Saddleback Junior College 445 F.2d 932 (9th cir., 1971)

- 37a. Tinker, supra note 16 at 513.
38. Katz v. McAulay, 324 F. Supp. 1047 (S.D. N.Y., 1970);
aff. 438 F.2d 1058 (2nd cir. 1971)
39. Breen v. Kahl 296 F. Supp. 702 (W.D. Wisc. 1969); aff. 419
F.2d 1034 (7th Cir. 1969); cert. den. 398 U.S. 937 (1970)
40. Butts, supra note 19 at 732
41. Eisner, supra note 10 at 809-810, see also Wear v. Minnesota
283 U.S. 697 (1931) (For discussion of "prior restraint")
42. Dunn v. Tyler Independent School District, 327 F. Supp. 528
at 533 (E.D. Tex. 1971)
43. Banks v. Board of Public Instruction of Dade Co. 314 F. Supp
285 at 296 (S.D. Fla., 1970); vacated 401 U.S. 988
44. Sims v. Board of Education of Independent School District No. 22,
329 F. Supp 678 at 689 (D. N. Mex., 1971)
45. Tinker, supra note 16 at 506.
46. In re Gault, 387 U.S. 1 at 13 (1967)
47. Miller, "Freedom of Expression Under State Constitutions,"
20 Stanford Law Review 318 at 329 (1968)
48. Passel v. Fort Worth Independent School District 440 S.W. 2d
61 (Tex 1968); see also, Waugh v. Board of Trustees of
the University of Mississippi 237 U.S. 589 (1918)
49. Id. at 68, dissenting opinion of Justice Smith, see also Elfbrandt
v. Russell, 384 U.S. 11 (Ariz. 1966)
50. Robinson v. Sacramento City Unified School District 53 Cal.
Reptr. 781 (1966)
51. Cox v. State of Louisiana, 379 U.S. 536 at 559 (1965)
52. Sheldon v. Fannin, 221 F. Supp. 766 at 775 (d. Ariz. 1963)
53. Id. at 774-775
54. School District of Abington T. P. Pa. v. Schempp, 374 U.S. 203
(Pa. 1963)
55. Engel v. Vitale, 370 U.S. 421 (N.Y. 1962), see Kauper, Prayer,
Public Schools and the Supreme Court, 61 Michigan Law
Rev. 1031, 1046, 1065-66 (1963)
56. In Re Donaldson, 75 Cal Reptr. 220 at 222 (Calif., 1969)
57. Id.
58. Id. at 223, see also People v. Jackson 319 N.Y. 2d 731 at 733
(1970); Mercer v. State 450 S.W. 2d 716 (Tex. Civ. App.
1970)
59. State v. Stein, 456 P2d 1 (Kan. 1969), also People v. Overton 20
N.Y. 2d 360 at 363 (N.Y. 1967)
60. People v. Overton, 20 N.Y. 2d 360 (N.Y. 1967); 229 N.E. 2d
596 (1967)
61. Howell v. Kingston Township School District 161 A. 559 (Pa 1932)
62. Davis V. Firment 269 F. Supp. 524 at 529 (E.D. La., 1967);
Aff 408 F2d 1085 (5th cir 1969)
63. Press, infra note 89 at 564
64. Sims, supra note 44 at 690, citing Palmer v. Thompson 91 S. Ct.
1940 (1971)

65. Griswold v. Connecticut, 381 U.S. 479 at 486 (1965) J. Goldberg concurring.
66. Watson v. Thompson 321 F. Supp. 394 at 401-402 (E.D. Tex. 1971)
67. Murphy v. Pocatello School District #25, 480 P2d 878 at 883-884 (Idaho, 1971)
68. Pritchard v. Spring Branch Independent School District, 308 F. Supp. 570 at 577 (S.D. Tex. 1970)
69. See William v. Eaton 310 F. Supp. 1342 (D. Wyo. 1970)
70. Westley v. Rossi 305 F. Supp. 306 at 714 (5th Div. Minn. 1969), Civil Rights to wear long hair in a particular style which is sanitary and no hazard is protected by 42 U.S.C. 1983.
71. Breen, supra note 39 at 706.
72. Richards, supra note 12 at 1284
73. Bannister v. Paradis, 316 F. Supp. 185 at 188 (W. 4, 1970)
74. Ferrell v. Dallas Independent School District, 261 F. Supp. 545 at 552 (N.D. Tex. 1966); aff. 392 F2d 697 (5th civ., 1968), cert. den. 393 U.S. 856.
75. Brownlee v. Bradley County Tennessee Board of Education 311 F. Supp. 1360 (E.D. Tenn., 1970)
76. Richards, supra note 12 at 1285.
77. Id.
78. Id. at 1286
79. Gere v. Stanley, 320 F. Supp. 852 at 855-858 (M.D. Pa. 1970)
80. Davis v. Ann Arbor Public Schools, 313 F. Supp. 1217 at 1226 (Mich. 1970)
81. Id.
82. East Coast Hotel Co. v. Parrish, 300 U.S. 379 (1937)
83. Lovelace v. Leechburg Area School District, 310 F. Supp. 579 at 587 (W.D. Pa. 1970)
84. Brick . supra note 26 at 1320.
85. Stevenson v. Wheeler County Board of Education, 306 F. Supp. 97 at 101 (S.D. Ga., 1969); aff. 426 F2d 1154 (5th cir., 1970) cert. den.
86. Id.
87. Brownlee, supra note 75 at 1366-67.
88. Sims, supra note 44 at 685
89. Press. v. Pasadena Independent School District, 326 F. Supp. 550 at 565 (S.D. Tex. 1971)
90. Turley v. Adel Community School District, 322 F. Supp. 402 (S.D. Ia. 1971)
91. Sims v. Colfax Community School District, 307 F. Supp. 485 at 487 (Ia., 1970)

92. Hill v. Lewis, 323 F. Supp. 55 (E.D., N.C. 1971)
93. Pound v. Holladay, 322 F. Supp 1000 at 1005 (N.D. Miss. 1971)
94. Corley v. Daunhauer, 312 F. Supp. 811 at 817 (Ark, 1970);
Compare Cordova v. Chonko 315 F. Supp. 953 (Ohio, 1970)
95. Christnas v. El Reno Board of Education Independent School District, 313 F. Supp. 618 (N.D. Okla., 1970)
96. Nevhaus v. Torrey, 310 F. Supp 192 at 194 (Calif., 1970)
97. Ordway v. Hargraves, 323 F. Supp. 1155 at 1158 (D. Mass., 1971)
98. Cordova v. Chonko, 315 F. Supp. 953 at 964 (Ohio, 1970)
99. Wright v. Van Buren Public Schools, 306 F. Supp. 1388 at 1396
(Mich., 1969)
100. Alexander v. Thompson, 313 F. Supp 1389 at 1396 (C.D. Calif., 1970)
101. 141 U.S. 250 at 251 (1891); see also Stanley v. Georgia 394 U.S. 557 at 564 (1969); Schmerker v. California 384 U.S. 757 at 767, 772; Griswold v. Supra Note 66 at 490
102. Tinker, supra note 16 at 508
103. Pritchard, supra note 68 at 578
104. Meyer v. State of Nebraska 262 U.S. 390 at 401 (1923).
105. Durham v. Pulsifer 312 F. Supp 411 at 417-418 (D. Vt. 1970)
106. Karr v. Schmidt 320 F. Supp. 728 at 735 (Tex. 1970)
107. Whitsell v. Pampa Independent School District 316 F. Supp. 852 at 854 (N.D. Tex. 1970)
108. Turley, supra note 90 at 418
109. Perry v. Grenada Muncipal Separate School District 300 F. Supp 748 at 753 (N.D. Miss. 1969)
110. Brick, supra note 26 at 1321
111. Parker v. Fry, 323 F. Supp. 728 at 732 (E.D. Ark, 1971)
112. Westley, supra note 70 at 713
113. Crews v. Cloncs, 432 F.2d 1259 (7th cir. 1970)
114. Miller v. Gillis, 315 F. Supp 94 at 101 (Ill., 1969)
115. Id.
116. Brown, supra note 6
117. Smith v. St. Tammany Parrish School Board, 316 F. Supp. 1174 (La., 1970)
118. Griswold, supra note 65 (J. Goldberg concurring.)
119. Dawson v. Hillsborough County, Fla. School Board 322 F. Supp. 286 at 303-304 (M.D. Fla. 1971) see also Parker, supra note 112 at 732.
120. Black v. Cothren, 316 F. Supp. 469 (Neb. 1970)
121. Guzick, supra note 22 at 481
122. Burnside v. Byars, 363 F.2d 744 at 749 (5th cir. 1966)
123. Press, supra note 89 at 563
124. Tinker, supra note 16 at 507

125. Akin v. Board of Education of Riverside Unified School District
68 Cal. Repr. 557 at 562 (1968)
126. Board of Directors of Independent School District of Waterloo
v. Green, 147 N.W. 2d 854 at 857 (Ia., 1967)
127. Lipkis v. Caveney, 96 Cal. Repr. 779 at 783 (Calif., 1971)
128. Bouse v. Hipes, 319 F. Supp. 515 at 517 (Ind., 1970)
129. Pritchard, supra note 68 at 573.
130. Crossen v. Fatsi, 309 F. Supp. 114 at 118-119 (Conn., 1970)
131. Hill, supra note 92 at 58.
132. Melton, supra note 32 at 98
133. Hernandez v. School District Number One, Denver, Colo.,
315 F. Supp 289 at 291 (D. Colo. 1970)
134. Schwartz v. Schuker, 298 F. Supp. 238 at 240 (N. Y. 1969)
135. Lambert v. Marushi, 322 F. Supp. 326 at 331 (W. Va., 1971)
136. Pound, supra note 93 at 1004
137. Hammond v. Shannon, 323 F. Supp. 681 at 683 (W.D. Tex., 1971)
138. Press, supra note 89 at 564.
139. Livingston v. Swanquist, 314 F. Supp 1 at 5 (Ill. 1970)
140. Carter v. Hodge, 317 F. Supp 89 (W.D. Ark., 1970)
141. Wood v. Alamo Height Independent School District, 308 F. Supp.
551 at 552 (W.D. Tex., 1970)
142. Christmas, supra note 95 at 621.
143. Giangreco Center School District, 313 F. Supp. 776 at 779
(W.D. Mo., 1969)
144. Ferrell, supra note 74 at 548-549.
145. Brick, supra note 26 at 1321
146. Jackson v. Dorrier, 424 F.2d 213 (8th cir. 1970); cert. den.
400 U.S. 850 (1970)
147. Brownlee, supra note 75 at 1367
148. Lambert, supra note 135 at 331.
149. Press, supra note 89 at 558
150. King v. Saddleback Junior College, 445 F.2d 932 at 939 (9th cir.,
1971); rev. Oleff
151. Bouse, supra note 128 at 520.
152. Hatter v. Los Angeles City High School District 310 F. Supp.
1309 at 1311 (Calif., 1970)
- 152a. 28 U.S.C. 2201
- 152b. Press, supra note 89 at 566
153. Miller, supra note 114 at 99.
154. Tinker, supra note 16 at 508.
155. Cordova, supra note 98 at 953
156. Sullivan, supra note 30 at 1340
157. Burnside, supra note 122 at 748.
158. Tinker, supra note 16 at 508
159. Id. at 510
160. Id.
161. Barnette, supra note 17 at 637
162. Breen, supra note 39, Watson, supra note 66, Turley, supra note 90.

163. Westley, supra note 70 at 710.
164. Id., at 712
165. Id., at 710
166. Id., at 713
167. Stevenson v. Wheeler County Board of Education, 306 F. Supp. 97 at 98 (Ga., 1969); aff. cert. den. 91 S. Ct. 355 (1970)
168. Vought, supra note 99 at 1396
169. Lovelace, supra note 83 at 558
170. Alexander, supra note 100 at 1393
171. Cordova, supra note 98 at 958
172. Bannister, supra note 73 at 186
173. Watson, supra note 66 at 403
174. Dawson v. Hillsborough County Florida School Board, 322 F. Supp. 286 at 298 (Fla., 1971)
175. Martin v. Davson, 322 F. Supp. 318 at 323 (W.D. Pa., 1971)
176. Lambert, supra note 135.
177. Turley, supra note 90 at 407
178. Parker, supra note 111 at 737
179. Axtell v. LaPenna, 323 F. Supp. 1077 at 1081 (W.D. Pa., 1971)
180. Butt, supra note 19 at 730
181. Scoville, supra note 29 at 14
182. Burnside, supra note 122 at 746
183. Bucker v. Panitz, 299 F. Supp. 102 at 103 (N. Y., 1969)
184. Id. at 103
185. Frain, supra note 33 at 29
186. Sullivan, supra note 30 at 1342
187. Id., at 1341
188. Acquirre v. Tahoka Independent School District, 311 F. Supp. 664 at 665 (Tex. 1970)
189. Black, supra note 120. at 469-470
190. Id.
191. Id.
192. Freeman v. Flake, 320 F. Supp 531 at 534 (Utah 1970)
193. Laine v. Dittman, 259 N. E. 2d 824 at 827 (1970)
194. Howard v. Clark, 299 N. Y. 32d. 65 at 67 (N. Y. 1969)
195. Karr v. Schmidt, 320 F. Supp. 728 at 733 (Tex., 1970)
196. Watson, supra note 66 at 407
197. Sullivan, supra note 30 at 1346
198. Cordova, supra note 98 at 961
199. Acquirre, supra note 188 at 666
200. Karr, supra note 106 at 731
201. Sealey, Rafky and Pinsky, "The Law and Social Psychology of the Adolescent Students," 1971 (Unpublished at this time)